

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES

WASHINGTON, D.C. 20548

*14874 Higgins*  
*[Salary and Responsibilities of Acting Assistant Architect of the Capitol]*  
*PLMI*

FILE: B-199668

DATE: September 11, 1980

MATTER OF: Acting Assistant Architect of the  
Capitol - Salary and Responsibilities

- DIGEST: 1. The Architect of the Capitol, in view of the broad power to delegate authority under 40 U.S.C. § 163b, may appoint another official to be Acting Assistant Architect during the disability of the Assistant Architect. The Acting Assistant may only be paid at the salary rate applicable to his official position. In the absence of statutory authority, he may not be paid from the salaries appropriation applicable to the Assistant Architect's position.
2. The Acting Assistant Architect of the Capitol may not act for the Architect of the Capitol during the latter's absence or disability. The statute, 40 U.S.C. § 164a, provides for the next official in line, the Executive Assistant Architect, to act as Architect in the event both the Architect and the Assistant Architect are absent or disabled.

Mr. George M. White, Architect of the Capitol, has requested our advance decision on a number of issues relating to the position of Assistant Architect of the Capitol. His letter indicates that the current Assistant Architect, Mr. Mario E. Campioli, has been unable to fulfill the duties of his office since May 19, 1980, owing to a job-incurred occupational disease. Though Mr. Campioli is being compensated by the Department of Labor under the Workers' Compensation laws and is in a leave-without-pay

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status pending a decision on his entitlement to permanent disability compensation, he is officially retained as Assistant Architect on the rolls of the Architect of the Capitol. He may continue in this status for as long as 1 year.)

In the meantime, Mr. William I. Ensign, the Director of Architecture, has been detailed by the Architect to the position of Acting Assistant Architect of the Capitol during the absence of Mr. Campioli.) Mr. White states that he intends to appoint Mr. Ensign to the permanent position of Assistant Architect as soon as Mr. Campioli's status is resolved.)

In his letter, Mr. White raises several questions relating to the position of Assistant Architect. The first question is whether Mr. Ensign may be appointed to the position of Assistant Architect of the Capitol in an acting capacity at Level IV of the Executive Schedule.) The rate of compensation of the Assistant Architect position was raised to a rate equal to Executive Level IV by Public Law 96-146, December 14, 1979, 40 U.S.C. § 166b. [In his current official position as Director of Architecture, Mr. Ensign is being compensated at the lower rate of Level V of the Executive Schedule.)

In view of the broad power to delegate authority that is granted to the Architect by 40 U.S.C. § 163b, there can be no objection to Mr. Ensign acting as the Assistant Architect.) That section authorizes the Architect to delegate to the Assistant Architect and other assistants such authority as he deems proper. But, [with respect to Mr. Ensign's compensation, the governing principle is that an officer or employee appointed to an office who performs the duties of a higher office is entitled only to the salary of the position to which he is appointed.) See e.g., Coleman v. United States, 100 Ct. Cl. 41 (1943). Therefore, we have held that, in the absence of a statute to the contrary, [a person serving under an acting appointment is entitled only to the salary of his permanent office, which is not changed by virtue of an acting appointment.] B-150847, August 26, 1971; B-150847, March 18, 1975. We have not found a statute prescribing that an Acting Assistant Architect is entitled to a higher rate of compensation than that

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which is accorded to his permanent position. Accordingly, while Mr. Ensign may be detailed to perform the duties of the Assistant Architect, he may not receive compensation at a greater rate than that of his permanent position as Director of Architecture, Level V of the Executive Schedule.)

In this regard, we have considered the effect of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977), which under certain conditions permit retroactive temporary promotions with backpay to employees detailed to higher-grade positions. Those decisions do not change the conclusion stated in the prior paragraph because the Turner-Caldwell remedy is premised on agency failures to follow the Federal Personnel Manual requirements limiting the permissible duration of details to higher-level positions. Those regulations do not apply to the position of Assistant Architect of the Capitol, and we do not believe the remedy provided by Turner-Caldwell should be extended to positions under the Executive Schedule or equivalent positions. See William Rankin, 56 Comp. Gen. 432 (1977).

This leads to the second question posed by Mr. White, namely whether Mr. Ensign may be appointed to the position of Acting Assistant Architect without regard to the Classification Act of 1949 so that Mr. White could pay him from the "Salaries" appropriation. At the present time Mr. Ensign is paid from a construction payroll.)

Section 166b-3 of title 40, [U.S. Code] authorizes the Architect, without regard to the Classification Act, to fix the compensation of three positions under the appropriation "Salaries, Office of the Architect of the Capitol", but it provides that such authority shall not apply to the position of Assistant Architect. The apparent reason for the proviso is that the salary of the Assistant Architect is fixed by statute.)

We understand that three excepted positions authorized by section 166b-3 are all filled at the present time and hence are not available to Mr. Ensign. The position

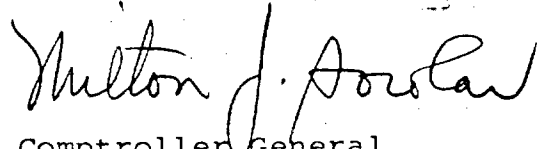
of Assistant Architect is taken out of section 166b-3 by the express terms of the statute. As indicated above, until the position of Assistant Architect becomes vacant and Mr. Ensign is permanently appointed, he is not entitled to receive the salary attached to the Office of Assistant Architect. Accordingly, we conclude that the Acting Assistant Architect may not be paid out of the Salaries appropriation.)

Finally, Mr. White inquires whether the Acting Assistant Architect may act as the Architect of the Capitol when the Architect is absent or unable to perform his duties. Section 164a of title 40, U.S. Code provides for the order of succession as follows:

"§ 164a Same; Assistant Architect of the Capitol or Executive Assistant to act in case of absence, disability, or vacancy

"On and after August 18, 1970, the Assistant Architect of the Capitol shall act as Architect of the Capitol during the absence or disability of that official or whenever there is no Architect, and, in case of the absence or disability of the Assistant Architect, the Executive Assistant shall so act."

We interpret this section to mean that the Executive Assistant becomes the Acting Architect in the event of the absence or disability of both the Architect and the Assistant Architect. Since the incumbent Assistant Architect, Mr. Campioli is disabled, the Executive Assistant is empowered by 40 U.S.C. § 164a to act as Architect if that official is absent or disabled. The Acting Assistant Architect is performing the duties of Assistant Architect during Mr. Campioli's disability, but he does not hold the position itself and would not be entitled to act as Architect of the Capitol.



For the Comptroller General  
of the United States